



## Appeal Court Jurisdiction

Please note on 7/27/16 COC sent "Remittitur" and "Order" dismissing matter for failure to pay filing fee. Appellant hereby timely files Motion for reinstatement and rehearing which specifically points out law and facts overlooked and/or misapprehended by the clerk and judicial officers of this Court. Notice Wise v. SCDC, 642 S.E.2d 551 (S.C. 2007) holding when remittitur has been properly sent, appellate court no longer has jurisdiction; the only exception to the rule is when remittitur is sent down by mistake, error or inadvertence of the appellate court. Appellant does herein point out specific errors, mistakes, and/or inadvertence of both law and fact. Also consider State v. Keads, 39 S.C. 553, 175 S.E. 802 (S.C. 1893) holding "... the proper time to make such a showing would be when the motion to dismiss the appeal was made, or at least before the remittitur was sent down." Appellant conclusively proves this was attempted, see cover letter and motion Exhibits C and D, dated 6/27/16 which was ten (10) days prior to "Order" of dismissal filed 7/8/16, see Exhibit F.

## Statement of the Case

This case began with an SCDC Grievance matter concerning violations of religious freedom, property and due process rights by that agency. It then moved to ALC and came to this Court as an abuse of discretion claim due to ALJ's errors of fact, law and failure to adjudicate on the merits. These important and essential issues are not reasonably believed to be before this appellate Court, but rather the issue of in forma pauperis status of appellant is in dispute.

Please note on 3/29/16 Appeals Court Judge Jasper W. Cureton issued Order denying Appellant's Motion

to proceed in forma pauperis citing Ex Parte Martin; see Exhibit A-1. On 4/4/16 Appellant timely filed Motion to Alter or Amend (rehearing) with Judge Cureton arguing reconsideration based on various legal principles of law and fact clearly demonstrating why Martin was not applicable to the present case; see Exhibit A-2. Appellant argues this motion has never been properly adjudicated on the meritorious claims it stated!

On 6/17/16 appellant received "Order" holding his "Motion" would not be considered per Rule 240 and falsely claiming "Order" did not have the effect of dismissal. This "Order" was illogical, note appellant provided conclusive evidence proving poverty; not allowing him to proceed without payment would in effect and in fact be a dismissal; see Exhibit D. This Motion, also, has never been properly adjudicated on it's merits.

### Argument

The crux of this matter seems simplistic when viewed with reason and logic. Appellant claims entitlement/right to appeal his cause of action even though he is indigent. His pleadings, thus far, show a convincing body of both state and federal laws and rights which support his legal premise, further he has submitted conclusive evidence of indigency.

The position the officers of this appellate court appear to take is the appellant is not allowed to appeal because he cannot pay the filing fee. The only support for this position cited by Judge Cureton was Ex Parte Martin, 471 S.E.2d 134 (1995), but as previously stated it is clearly inapplicable and irrelevant. It dealt specifically with state statute 324-27-100 + 24-27-150 which have not been raised in our present case. In fact and law Martin supports this appellant's cause when it clearly

holds "other statutory exceptions and other fundamental rights may require the waiver of filing fees."

Carefully consider that when Appellant's Motion made this very argument Judge Willis did not argue the merits raised in the Motion but instead claimed Appellant could not file such Motion because it was not a final order which served to dismiss the case. To support this premise he cited Rule 240(i) SCACR but he failed to consider this very court's ruling in *Lake v. State*, 501 S.E.2d 228 (Ct. App. 1995) holding because the judicial order in effect, the appellant's inability to pay and the court's requirement to pay, "discontinued the action" and essentially made it a final order; also note § 14-3-330 and consider Rule 240(j) which clearly states that motion to alter or amend is the proper way to address this specific circumstance, when Appellant pointed out these facts and laws instead of reconsideration the Clerk of Court's office ruled for dismissal and filed remittitur but carefully consider this was still an issue of *informa pauperis* status and Martin specifically held the C.O.C. must submit such decision to a judge. Therefore clear error, mistake, or inadvertence has been demonstrated and rehearing is mandated.

as to multiple controlling case law citations to support his cause note *Burns v. Ohio*, 360 U.S. 252 (1959) holding appeal cannot be denied for inability to pay fees, *Douglas v. California*, 372 U.S. 353 (1963) "Unfairness results only if indigents are singled out by the State and denied meaningful access to the appellate system because of their poverty." In *re Premis*, 436 U.S. 412 (1978) held court access is a "fundamental right." and *Bush v. Lucas*, 462 U.S. 367 (1983) held "appellate review is a right." Appellant believes his two (2) motion filings more than

sufficiently state his cause. Appellant believes if this Court will carefully review the record on appeal it will demonstrate his prior arguments are well plead and sufficiently cited to show his entitlement/right to proceed in forma pauperis. Sadly he also reasonably believes any reasonable person, jurist or layman, knowing the facts and circumstances involved would be forced to conclude as the Court did in *Breman v. U.S.*, 378 U.S. 530 (1964) when a justice said "I regret to say the lower court chose to interpret the rules [and law] not so as to reach, but rather defeat, a just determination of this case."

### Conclusion/Relief

Appellant asks notice that the Agency failed to accord him religious freedom and property rights, it then denied meaningful due process by failure to respond timely. Note ALJ based dismissal not on merits of Appellant, Agency pleadings or the record but rather falsely accused Appellant of lying about Step 2 Grievance filing; then when shown conclusive evidence of said filing ALJ refused to rehear. When Appellant sought appeals Court review his in forma pauperis motion was erroneously dismissed as were subsequent motions to reconsider. Please notice Rule 501 SCACR which states "Our legal system is based on the principle that an independent, fair and competent judiciary will interpret and apply the laws that govern us." The "system" has failed in the case at bar and this failure has significantly prejudiced this Appellant at each stage of process.

If upon careful and impartial review this Court views the facts and law as the Appellant does he asks to be allowed to proceed in forma pauperis and to

have the merits of his cause meaningfully heard and fairly adjudicated. If this Court can truthfully argue it's officers have acted lawfully, then Appellant asks this Court to provide ample arguments, reasoning and citations of applicable law to support dismissal of his cause; this so done to provide sufficient record for review on Writ of Certiorari and, if necessary, for appeal to the U.S. District Court.

Date: 8/7/16

Respectfully Submitted,

James B. Weersing Pro Se

### Certificate of Service

I do hereby certify and affirm that copies of the inclosed legal documents were served on the Agency/Respondent at S.C.D.C. General Counsel, 4444 Broad River Rd., Columbia, S.C. 29221 by placing it with agency personnel at the institutional mail room.

Dated: 8/8/16 Signed: James B. Weersing

**RECEIVED**

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SC Court of Appeals

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HOLLAND TARIFF 2016-10-01

AUTHORITY